

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.1246 OF 2001

Shri Dilip Eknath Choudhari . . .Applicants/Petitioners
& Ors
versus

M/s. Shyam Gandhi Construction .. Respondent
Company.

...

Mr. P.P. Goyal for applicants.

CORAM : D.G. KARNIK, J

DATED :26th September 2006.

P.C:-

1. This revision application is directed against the orders dated 2nd May, 2000 passed by the executing court of Civil Judge, Senior Division, Pune rejecting the application of the petitioners for dismissal of a executing proceeding.

2. The respondent is the landlord of the suit premises. He filed a suit bearing Civil Suit No.490 of 2005 against the petitioners for possession. Compromise took place between the parties and consent decree was passed in the suit in terms of purshis at Exhibit 18 filed by the parties. Under the consent decree the petitioners agreed to hand over possession of the suit property to the respondent by 15th September, 1996. The consent decree further provided that in case the petitioners failed to hand over the possession to the respondent by the agreed date, the respondent would be entitled to recover Rs.50/- per day from the petitioners from 15th September, 1996 till delivery of possession. As the petitioners did not hand over possession to the respondent by 15th September, 1996, he filed an execution proceeding bearing Darkhast No.70 of 2000 for execution of the decree. Learned counsel for the petitioners states that possession has since been handed over and the Darkhast only remains regarding recovery of the compensation.

3. In the said execution proceeding the petitioners filed an application at Exhibit 18 contending that respondent was not entitled to the penalty of Rs.50/- per day as the respondent who was decree holder, had

failed to perform the terms and conditions of the compromise decree. They prayed that the execution proceedings be dismissed. By the order dated 2/5/2001 passed, the trial court dismissed the said application. Similar order was passed below Exhibit 1 directing that the execution petitioner would proceed further in accordance with law. That order dated 2/5/2001 rejecting appellant's application is impugned in this civil revision application.

4. Perusal of clause (b) of consent terms show that the petitioners had agreed to handover the possession of the suit property to the respondent by 15th September, 1996. The petitioners had further agreed that in the event they failed to deliver the possession, the respondent would be entitled to execute the decree and claim penalty of Rs.50/- per day for the period from 15th September, 1996 till delivery of the possession of the suit property. Learned counsel for the petitioners admits that the petitioners did not hand over the possession to the respondent by 15th September, 1996 because respondent no.1 decree holder- has not fulfilled other conditions of the consent terms. This is a matter for the executing court to decide on merit. The executing court had the jurisdiction to determine whether the

appellant under the decree was liable to pay the penalty or not. Executing court has exercised the jurisdiction vested in it and the decision of the executing court cannot be said to be in any way perverse. In the circumstances the revision application has to be dismissed. Jurisdiction of this Court under Section 115 of the Code of Civil Procedure to entertain a revision application is limited. A revision application can be entertained when the court fails to exercise the jurisdiction vested in it or exercise the jurisdiction not vested in it or exercises the jurisdiction with material irregularity. Neither of the things is shown to be exist. In the circumstances the revision is without any merit and is hereby dismissed.

(D.G. KARNIK, J.)